

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B02
PLR-149733-13
Date:
February 19, 2014

LEGEND:

X =

A =

B =

C =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear

This responds to a letter dated December 3, 2013, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State on Date 1 and elected to an S corporation effective Date 1. In Date 2, X's shareholders executed a Shareholders Agreement. The agreement provides that if X has elected S corporation status, then X will not nor will it be compelled to recognize any transfer of X's shares to a party, who in the opinion of X's counsel, that could result in the termination of X's S corporation status. On Date 3, B entered into an agreement with A to purchase a portion of A's shares of X. However, B was not an eligible S corporation shareholder. Therefore, effective Date 4, B assigned all of its shares of X to C, an eligible S corporation shareholder.

X represents that the circumstances resulting in the possible termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make adjustments, consistent with the treatment of X as an S corporation, as may be required by the Service.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3); (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken so that the corporation is a small business corporation; and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified under § 1362(f), agrees to make the adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary for that period, then, notwithstanding the circumstances resulting in such termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that if X's S corporation election terminated on Date 3 due to an ineligible shareholder, the termination was inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f) X will be treated as continuing to be an S corporation from Date 3 and thereafter, provided that X's S corporation election is not otherwise terminated under § 1362(d). In addition, X and its shareholders must treat C as having held the shares of X effective Date 3 instead of B. X and its shareholders must amend any prior tax returns that are inconsistent with this treatment within 120 days of the date of this ruling. A copy of this letter should be attached to any such amended returns.

Except as specifically ruled above, we express or imply no opinion concerning the federal tax consequences of the transactions described above under any other provision of the Code. Specifically, we express or imply no opinion regarding whether X

is otherwise eligible to be an S corporation. This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. In accordance with the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: